

1 IC75911c

phone conference

1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK  
2 -----x

3 IN RE: TERRORIST ATTACKS ON  
4 SEPTEMBER 11, 2001,

5 v.

03 MDL 1570 (SN)

6 -----x  
7 New York, N.Y.  
8 December 7, 2018  
9 4:00 p.m.

10 Before:

11 HON. SARAH NETBURN,

12 Magistrate Judge

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## 1 APPEARANCES

2 KREINDLER & KREINDLER  
3 Attorneys for Plaintiff  
BY: ANDREW J. MALONEY4 MOTLEY RICE  
5 Attorneys for Plaintiff  
BY: ROBERT T. HAEFELE6 ANDERSON KILL & OLICK, P.C.  
7 Attorneys for Plaintiff  
BY: JERRY S. GOLDMAN8 LEWIS BAACH, PLLC  
9 Attorneys for Defendants Muslim World League and  
International Islamic Relief Organization  
BY: WALEED NASSAR

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1 (Phone conference; in chambers)

2 THE COURT: Good afternoon.

3 This is Judge Netburn. I am here with my law clerk  
4 and with a court reporter. The purpose of this call is in  
5 response to Mr. Fleming's letter of November 26th. I just had  
6 some clarifying questions and so what I would like to do is I  
7 understand that there are more than 20 people on this call  
8 right now. I think all we need to do is have those people who  
9 intend to speak state their appearance for the record. And if  
10 anybody subsequently realizes that they do need to speak, you  
11 can make your appearance at that time.12 So, let me begin by asking who is on the line on  
13 behalf of the Re: Havlish and Hoglan plaintiffs.14 MR. FLEMING: Your Honor, this is Timothy Fleming who  
15 sent you the letter, submitted the letter originally on behalf  
16 of the Re: Havlish and Hoglan plaintiffs, and I believe we are  
17 going to be joined by Dennis Pantazis, who is the leader of our  
18 group. I will be speaking for us but Mr. Pantazis may want to  
19 make some points as well.

20 THE COURT: Very well.

21 MR. PANTAZIS: And, your Honor, this is Dennis  
22 Pantazis, I am on the line.

23 THE COURT: Thank you.

24 Anybody else who currently thinks that they are going  
25 to want to speak who would like to then make their appearance

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2 for the record?

2 Sorry. We had somebody about to make an appearance.

3 Waleed --

4 MR. NASSAR: Yes, Waleed Nassar from Lewis Baach on  
5 behalf of Muslim World League and International Islamic Relief  
6 Organization.7 MR. HAEFELE: Your Honor, Robert Haefele from Motley  
8 Rice for the Plaintiffs' executive committees.

9 THE COURT: Great. Okay.

10 So, Mr. Fleming, I will just begin with my questions.  
11 I have your letter. What I wanted to you do, because you were  
12 seeking to combine two short form complaints as I understand  
13 it, is if you could just explain to me who you are seeking to  
14 sue in this newest complaint?

15 MR. FLEMING: Yes, your Honor.

16 It is not so much we want to combine two short form  
17 complaints it is rather that -- first of all, the answer to  
18 your question directly is that we want to sue exactly the same  
19 parties of the defendants that we sued in the Hoglan case and  
20 we got judgments against in Hoglan and previously in the  
21 Havlish case, which is the Islamic Republic of Iran and seven  
22 political subdivisions of the State and eight agencies and  
23 instrumentalities. We want -- in fact, one of our main points  
24 is that we wish to have a complaint that has identity of those  
25 defendants in the prior cases.

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1                   THE COURT: Okay. Why don't you just describe for me  
2 what it is, specifically, that you are seeking.

3                   MR. FLEMING: Yes.

4                   What we would really like to do, first of all as a  
5 threshold matter I want to be clear about one thing, and that  
6 is we were not sure whether your Honor's order of July 10,  
7 2018, regarding use of the short form complaint in Iran cases,  
8 is mandatory or optional. I refer specifically to the use of  
9 the word "may" at the bottom of page 4 of that order where it  
10 says: *Any plaintiff who has not yet filed a claim against Iran*  
11 *and intends to do so, may initiate an action against Iran*  
12 *through the filing of an Iran short form complaint,*  
13 *substantially in the form attached hereto.*

14                  We wanted to be sure to comply with your order, both  
15 in spirit as well as the letter of your order, and so I note,  
16 out of respect for the Court, we filed a letter seeking this  
17 guidance. What we really want to do, and use of the short form  
18 is optional then there is no problem and we would proceed, but  
19 what we want do is to file a long-form complaint that really  
20 tracks the Hoglan complaints that we have already filed and  
21 proceeded to judgment -- in partial final judgment,  
22 respectfully, in those cases already. There are several  
23 reasons why we want to do that but if the short form is  
24 optional, then it seems that we could go ahead and do that. If  
25 it is not optional, it was intended to be mandatory, that's why

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1 we sent the letter asking to follow a different path. And  
2 there is a number of reasons that have been formed by, in large  
3 part by our recent experience in Havlish and Hoglan where we  
4 are seeking to enforce those judgments in overseas courts in  
5 international litigation that is attempting to -- where we are  
6 attempting to enforce and collect upon those judgments.

7 What we have found is that Court's, and we have been  
8 advised by international counsel and there have been many  
9 proceedings, we found that the Courts overseas are very much  
10 more formalistic than the Courts in the United States, and that  
11 there is a lot of aspects that are deeply scrutinized by the  
12 Courts in terms of the pleadings and the judgments. And in the  
13 Havlish case, where we have advanced proceedings, our pleadings  
14 have been challenged in those cases, tested thoroughly and, to  
15 date at least, they have survived those tests and proceeded.  
16 Now, we are going to want to include all of our new clients in  
17 those cases which of course take a long time or in new cases in  
18 the future, but deviations in the formats of the pleadings can  
19 cause major problems in that sort of litigation.

20 We don't know whether the short form complaint would  
21 work. Maybe it would, but maybe it wouldn't. But, we have a  
22 responsibility for our clients, of course, to do everything we  
23 can to ensure that they are able to enforce their. And our  
24 international counsel and so far our experience with the Courts  
25 overseas, shows that it is a much, much, much preferable to

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1 have identity and we are concerned that the short form of  
2 complaint would not mesh well with what we have done to date.  
3 That's the first major problem.

4 The second major problem is that we want to add those  
5 other 15 defendants because that is another issue in the  
6 international collections cases that we have encountered and it  
7 is very necessary to have an identity of the defendants who  
8 have been brought to judgment. So, it would be very much a  
9 problem to have different parties on the pleadings.

10 So that's why we have brought this and we want -- so,  
11 our first hope is that it's actually optional and that we could  
12 proceed to just file the long form complaint. Since Iran is  
13 not going to or none of the other 15 defendants are going to  
14 answer, this much is clear, we would think that -- we hope that  
15 it doesn't cause any particular problem or administrative  
16 burden for the Court, which we are not trying to do, but we  
17 would rather just file, file the long form complaints so that  
18 we can proceed as we have with the other two cases.

19 THE COURT: How many plaintiffs will be in the new  
20 case? I think it is the Ray case that was the new one?

21 MR. FLEMING: Yes, the Ray case. Not very many. It  
22 is between 20 and 25.

23 THE COURT: Okay. I understand all of that. And, in  
24 the alternative, if I don't permit that, the alternative is?

25 MR. FLEMING: Well, in the alternative, if we have to

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1 use the short form complaint what we would like do is tie it to  
2 the Hoglan case rather than to Burnett and Ashton and the  
3 reasons are similar but in particular, though, first of all the  
4 Havlish case and the Hoglan case came first, and they set the  
5 precedent.

6 Now, it is true that in the short form complaint it  
7 incorporates the findings in Havlish and evidence in Havlish  
8 but it doesn't incorporate the pleadings and that's where our  
9 problem is. That's what really gets examined. And so, we  
10 would want it to tie to Hoglan because then it would at least  
11 incorporate the pleadings. Now, we are concerned, of course,  
12 that, as I said, that the overseas courts would blink their  
13 eyes a few times at seeing a short form complaint as something  
14 very much out of their experience. But, if we have to use it,  
15 we would very much rather tie it to Hoglan than to either  
16 Ashton or Burnett. And we thought about, we looked at whether  
17 we could just add them through the other provisions of your  
18 order, add them to Havlish or Hoglan but Havlish has proceeded  
19 to final judgment, and we also have a few new estates that  
20 aren't tie-able to any current case so that really was not an  
21 option. So that is the main thing, to tie Hoglan and change  
22 the short form accordingly.

23 THE COURT: Okay. All right. I understand all of  
24 that.

25 My concern, in managing these cases, is the volume of

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3 new complaints and so the July 10th order was intended to  
4 facilitate both for counsel, who wanted to get claims in,  
5 particularly claims in and judgments entered as part of the  
6 victims' fund, but also separately for purposes of the Court's  
7 management so that we didn't constantly have new complaints  
8 with new pleadings raising different allegations. So, that has  
9 always been the motivating factor; not to harm anybody's claims  
10 or bar them in any way but to manage the case as a whole. So,  
11 my only concern is were I to grant you permission to file the  
12 long-form complaint as you seek, how many additional long-form  
13 complaints am I likely to get?

14 MR. FLEMING: Your Honor, this is Fleming again.

15 From us are you not likely to get another. We are  
16 concentrating on other enforcements and these are the last that  
17 we know of. We don't have any current plans to go beyond this,  
18 in fact, we have been waiting to make sure we get everybody who  
19 is interested from our groups included in this complaint but I,  
20 of course, obviously can't speak for anyone else.

21 THE COURT: Mr. Haefele, can you speak to that?

22 MR. HAEFELE: Your Honor, I haven't taken a poll of  
23 the plaintiff's group to figure out how many more there are. I  
24 do know that Motley Rice had some more that we're preparing.  
25 We are not rounding any more up, so to speak, but I know that  
we have some Moran filings and we would obviously attempt to  
use the short-form complaint.

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1 I can tell that you with regard to Mr. Fleming's  
2 approach, Mr. Fleming and I had a conversation yesterday and,  
3 quite frankly, we don't have a problem with his approach with  
4 regard to using a long-form complaint. Again, we have the same  
5 concern about proliferation of complaints with a variety of  
6 allegations, the same as your Honor had indicated, but given  
7 the fact that we are talking about a group of plaintiffs that  
8 had already done the pre-existing complaint and they are really  
9 looking back at their pre-existing complaint, we think it is  
10 somewhat of a *sui generis* situation.

11 THE COURT: Okay, that's helpful. Thank you.

12 Sorry, who is speaking now?

13 MR. HAEFELE: This is Robert Haefele, still.

14 THE COURT: Okay.

15 MR. HAEFELE: I think our position would be that we  
16 would prefer to see a singular long-form complaint that limits  
17 what had previously been done then some tinkering with the  
18 short-form complaint that we wouldn't necessarily know what the  
19 end result would be.

20 THE COURT: Sorry. I didn't follow that.

21 Your preference would be the relief that Mr. Fleming  
22 is seeking?

23 MR. HAEFELE: Yes. I think that's right. I think we  
24 would prefer to see the approach that Mr. Fleming is seeking,  
25 rather than some change to the short-form complaint where we

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1 don't know what the end result would be.

2 THE COURT: Okay. Thank you.

3 MR. GOLDMAN: Your Honor, this is Jerry Goldman from  
4 Anderson Kill. We are filing approximately seven more  
5 short-form complaints on Iran next week, that's 16 for the  
6 kingdom.

7 THE COURT: Okay.

8 MR. MALONEY: Andrew Maloney for the Ashton plaintiffs  
9 also under the PEC.10 You might have seen that we are filing new complaints  
11 against the Kingdom only -- Saudi Arabia using the short  
12 form -- but because your Honor's order on the short form limits  
13 it to 100 plaintiffs per complaint, we are filing I think 60 or  
14 70 separate complaints because we have thousands of people that  
15 have been injured and there are personal injury claims. This  
16 is the Kingdom only. We are not seeking to change anything in  
17 the pleadings other than to add new plaintiffs. But, the  
18 reason you are seeing multiple complaints filed by my office is  
19 because of the limitation on the short form for the number of  
20 plaintiffs.

21 MR. SAMUELS: Your Honor, Alan Samuels speaking.

22 I'm an attorney for two plaintiffs and we have not  
23 started an action against Iran and I would like -- my clients  
24 have instructed me to do so and I am wondering where I can get  
25 ahold of that so I can begin to get started.

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2 THE COURT: The order was docketed on July 10th, so  
3 you should do on the Pacer docket and you will be able to  
4 follow from that. But if that's unclear to you, I will offer  
5 Mr. Haefele's services so he can help you.

6 MR. HAEFELE: Thank you, your Honor. I was going to  
7 say that myself.

8 MR. FLEMING: Your Honor, this is Mr. Fleming again.  
9 since people have been telling you about new  
10 complaints against the Saudi kingdom, we are also filing three  
11 or four complaints very soon, probably next week, against the  
12 Kingdom and we do intend, in that matter, to use the short-form  
complaint.

13 THE COURT: Okay. Okay. Thank you. I don't think I  
14 need to hear an update. If everybody is proceeding apace under  
15 the guidelines then I don't need to hear an update.

16 Before I get off the line, I just wanted to check, we  
17 had Waleed Nassar had made an appearance and I asked people  
18 only to make an appearance if they intended to speak and so I  
19 wanted to give him an opportunity if he had something to say.

20 MR. NASSAR: I don't, your Honor. The conference call  
21 had me say my name when I was prompted so I did not intend to  
22 speak. So, I apologize for that.

23 THE COURT: That's quite all right.

24 Okay. I am going to grant Mr. Fleming the relief that  
25 he is seeking and he can file the long-form complaint that

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2 tracks the Hoglan and Havlish case. I am granting the relief  
3 on the application that was made before me which doesn't mean  
4 that anybody who comes after will get the same relief. I am  
5 hopeful that this is, as people have said, a *sui generis*  
6 moment, and so hopefully we won't have a radical change in the  
7 overall procedures. But, I will allow the Ray plaintiffs to  
8 file the long-form complaint as requested. All right?

9 Thank you very much everybody. Happy Holidays.

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